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October 1, 2013

VIA ECF

The Honorable Donovan W. Frank
United States District Court
724 Federal Building
316 North Robert Street
St. Paul, MN 55101

**Re: Karsjens, et al. v. Jesson, et al.,
Court File No. 11-cv-3659 (DWF/JJK)**

Dear Judge Frank:

I write to update the Court on the status of the issues raised in Plaintiffs' Motion for Payment of Fees and Costs (Dkt. No. 317) ("Plaintiffs' Cost Motion") filed on August 22, 2013 as requested in your Order dated September 30, 2013 (Dkt. No. 342).

Plaintiffs' Costs Motion seeks an order from the Court requiring the State to pay reasonable expenses incurred by Plaintiffs in this litigation relating to expert witnesses, depositions, transcripts and copying. (Dkt. No. 317). The State filed its opposition to Plaintiffs' Cost Motion on September 9, 2013. (Dkt. No. 328). This motion has not been scheduled for hearing. The parties have discussed this issue on many occasions but have not reached resolution.

Magistrate Judge Keyes recently granted Plaintiffs' Motion for Expedited Discovery, (Dkt. Nos. 322, 334), and discovery related to the preliminary injunction motions and the motions to dismiss must be completed by December 15, 2013.

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Plaintiffs have now served interrogatories, document requests and deposition notices on the State related to Plaintiffs' motions for preliminary injunction and declaratory judgment. Due to this expedited discovery, the issues raised in Plaintiffs' Costs Motion need to be resolved.

First, Plaintiffs seek to have experts appointed on Plaintiffs' behalf pursuant to Rule 706 of the Federal Rules of Evidence. This issue must be resolved now as Plaintiffs' preliminary injunction motion challenging the placement and treatment of the Class Members likely will require some expert testimony. (Dkt. Nos. 310, 313).

Second, Plaintiffs seek an Order requiring the State to pay for (1) Plaintiffs' experts, (2) depositions and transcripts costs, and (3) any copying cost pursuant to Minnesota's *in forma pauperis* (IFP) statute. Defendants have indicated that many of the MSOP's records are maintained in paper form rather than electronically. Therefore, there may be significant copying costs related to Plaintiffs' document requests. Given Plaintiffs' outstanding document requests, the issue of who should pay for these costs is now timely. Additionally, Plaintiffs plan to take video depositions as part of the expedited discovery, so Plaintiffs will soon incur those costs as well.

Given the pending expedited discovery, the issues raised in Plaintiffs' Cost Motion now need to be addressed. As Plaintiffs argued in their Motion, the State should be ordered to pay the expert fees and reasonable costs related to discovery, including the expedited discovery, based on the Federal Rules of Evidence, applicable case law, and Plaintiffs' IFP status.

Please call me if you have any questions.

Sincerely,

GUSTAFSON GLUEK PLLC

s/Daniel E. Gustafson
Daniel E. Gustafson

DEG/sam

cc: Counsel of Record (via ECF)